

HAMLETT ENGINEERING SALES COMPANY
TERMS AND CONDITIONS OF PURCHASE
Last revised June 14, 2019

Notwithstanding anything to the contrary in any quotation, purchase order or other communication (except a subsequent written amendment signed by the parties), the following terms will apply exclusively to all purchases by Hamlett Engineering Sales Company or its designated subsidiaries or affiliates (“Buyer”) from the Seller of Supplies (as defined below). For purposes of clarity, references herein to “goods” shall include machinery and/or equipment, as the case may be.

1. OFFER; ACCEPTANCE; EXCLUSIVE TERMS; IDENTITY OF BUYER:

Each purchase order or purchase order revision (“Order”) issued by Buyer is an offer or counteroffer to Seller for the purchase of goods and/or services listed in the Order (“Supplies”) and includes and is governed by these terms (“Terms”). When accepted, the Order supersedes all prior agreements, orders, quotations, proposals and other communications regarding the goods and/or services covered by the Order, except that a signed prior agreement (such as an award letter, Statement of Work or Non-Disclosure Agreement) will continue to apply to the extent not directly in conflict with the Order. Seller accepts the Order, including these Terms, and forms a contract by doing any of the following: (a) commencing any work under the Order; (b) accepting the Order in writing; or (c) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order. **The Order is limited to and conditional upon Seller’s acceptance of these Terms exclusively.** The Order does not constitute an acceptance of any offer or counteroffer made, or sales order or quotation submitted, by Seller. Any reference in the Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Order. **Any additional or different terms proposed by Seller, whether in Seller’s quotation, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and will not become part of the Order, are invalid and non-binding,** but shall not operate as a rejection of this Order if Seller accepts Buyer’s offer by commencement of work, shipment of Supplies, or by other means acceptable to Buyer, in which case this Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. Any modifications of Buyer’s Terms must be expressly stated in the Order. Each Order can be modified only in accordance with the express provisions of these Terms. Seller acknowledges and agrees that it has read and understands these Terms.

2. SHIPPING AND BILLING:

2.1 Shipping. Seller will: (a) properly pack, mark and ship Supplies according to the requirements of Buyer (which, for the avoidance of doubt, may include those requirements set forth or referenced in an Order), the involved carriers and the country of destination and in accordance with any applicable laws or regulations; (b) route shipments as Buyer instructs; (c) label or tag each package according to Buyer’s instructions; (d) provide papers with each shipment showing the Order number, part number, amendment or release number, number of pieces in the shipment, number of containers in the shipment, Seller’s name and number, and the bill of lading number; (e) not charge for costs relating to handling, packaging, storage or transportation (including duties, taxes, fees, etc.) unless otherwise expressly stated in the Order; and (f) promptly forward the original bill of lading or other shipping

receipt with respect to each shipment as Buyer instructs and according to carrier requirements. Seller will include on bills of lading or other shipping receipts the correct classification identification of the Supplies shipped as Buyer or the carrier requires. The marks on each package and identification of the goods on packing slips, bills of lading and invoices must enable Buyer to easily identify the Supplies. Seller will reimburse Buyer for any expenses incurred as a result of improper packing, marking, routing or shipping.

2.2 Shipping and Payment Terms. Except as expressly stated in the Order, the price of Supplies includes storage, handling, packaging and all other expenses and charges of Seller. Except as otherwise stated in the Order, the shipping terms for all goods are F.O.B. (as that term is defined and used in Section 2-319 of the Uniform Commercial Code) Buyer’s designated facility or such other location designated by Buyer. Buyer will pay proper invoices that reference the Order number, amendment or release number, Buyer’s part number, Seller’s part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, bill of lading number and other information required by Buyer, per the payment terms put in the Order. Payment will be made in the currency expressly stated in the Order; if no such currency is noted, payment will be made in U.S. Dollars. Payment will be made by mailing on or before the due date unless otherwise expressly agreed by Buyer. Upon and during any breach of the Order by Seller, Buyer may withhold payment of the invoice. Seller will pay all premium freight costs over normal freight costs if Seller needs to use an expedited shipping method to meet agreed delivery dates due to its own acts or omissions. Seller will pay any costs incurred by Buyer, including without limitation costs charged by Buyer’s customer(s) to Buyer, as a result of Seller’s failure to comply with shipping or delivery requirements. Unless different payment terms are established in the Order, subject to the remainder of these Terms, Buyer will pay all undisputed and accurate invoices within ninety (90) days of receipt thereof, measured from the date the Buyer receives the Supplies at its facility or, if Seller is responsible for any installation or testing services or any other service specified in the Order, the date that Seller completes such services, provided, however, that Buyer may, in all cases, withhold all payments until the Supplies have successfully completed final qualification and acceptance testing at Buyer’s facility. Unless otherwise agreed in writing by Buyer, Buyer will initiate final qualification and acceptance testing within four (4) weeks after delivery of the Supplies to Buyer’s facility. Buyer may also withhold payment for any goods or services until Buyer receives evidence, in such form and detail as Buyer requires, of the absence of any liens, encumbrances and claims on such goods or services.

2.3 Taxes. Unless otherwise stated in the Order, the price includes all applicable federal, state, provincial and local taxes other than sales, value added or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added or similar turnover taxes or charges that Seller is required by law to collect from Buyer. Seller will provide Buyer with whatever information and documentation that is required under local law in order to enable Buyer to recover any sales, value added or similar turnover taxes or charges. Invoices shall also be in the appropriate form as required by local law to permit deduction of payments for income tax purposes by the Buyer.

2.4 Withholding of Taxes by Buyer. If Buyer is required by law to make any deduction or withholding from any sum payable to Seller under the Order,

Buyer shall be entitled to deduct or withhold such amount and effect payment thereof to the applicable tax authority. Buyer will, upon request from Seller, provide Seller official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that any taxes which are withheld have been paid.

2.5 Waiver of Liens. Where permitted by law, Seller waives any lien or other rights that Seller might otherwise have on or in any of the Supplies for work performed on, or utilizing, such Supplies or otherwise. Further, Seller hereby agrees that it will promptly release any and all liens that it may have on any property of the Buyer or the Buyer's customer (whether or not such property is in Seller's possession) and, upon Buyer's request, provide Buyer with written confirmation that all such liens have been waived or released.

2.6 Delivery Schedules. Deliveries will be made to the address, in the quantities, on the dates and at the times specified by Buyer in the Order or any subsequent releases or instructions Buyer issues under the Order. Time is of the essence with respect to all delivery schedules Buyer establishes. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as stated in the Order. Buyer will not be required to pay for any Supplies that exceed the quantities specified in Buyer's delivery schedules or to accept Supplies that are delivered in advance of the delivery date specified in Buyer's delivery schedules. If the requirements of Buyer's customers or market, economic or other conditions require changes in delivery schedules, Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other compensation. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Buyer reserves the right to refuse all or any portion of the Supplies and/or to terminate all or any portion of the Order if Seller fails to timely deliver or perform any portion of the Supplies in accordance with the Order. If Seller's delivery of drawings (including without limitation proprietary drawings), other information or Supplies will not meet the required delivery date(s) for any reason, Seller shall provide Buyer with written notice of such delay and, unless Buyer terminates the Order as a result of such breach, Seller shall ship and/or provide the drawings, other information or Supplies via the most expeditious available method of transportation or otherwise, and any additional cost resulting therefrom shall be borne by Seller. Unless otherwise agreed in writing by Buyer, regardless of shipping terms, all risk that goods may be lost, damaged, stolen or delayed in transit shall be borne by Seller until conforming goods have been actually received, inspected, tested and accepted by Buyer in accordance with the Order. Seller shall not unreasonably anticipate delivery by purchasing materials or manufacturing quantities earlier than or in excess of what is reasonably required to meet Buyer's delivery schedule.

2.7 Premium Shipments. If Seller fails to have Supplies ready for shipment in time to meet Buyer's delivery schedules using the method of transportation originally specified by Buyer and, as a result, Buyer requires Seller to ship the Supplies using a premium (more expeditious) method of transportation, Seller will ship the Supplies as expeditiously as possible. Seller will pay, and be responsible for, the entire cost of such premium shipment, unless Buyer's actions directly caused Seller to fail to meet Buyer's delivery schedules, in which case Buyer will pay any costs for premium shipment.

2.8 Volume Forecasts. Buyer may provide Seller with estimates, forecasts or projections of its future anticipated volume or quantity requirements for Supplies. Seller acknowledges that any such forecasts are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature,

express or implied, regarding any such forecasts provided to Seller, including with respect to the accuracy or completeness of such forecasts.

3. INSTALLATION:

Unless otherwise agreed in writing by Buyer, Seller agrees that without further charge it shall assist Buyer in the installation of any Supplies purchased under the Order. Buyer and Seller shall agree in writing on the schedule for such installation and the role of each party in the installation process.

4. SPECIFICATION, DESIGN AND SCOPE CHANGES:

Buyer reserves the right to direct changes, or to cause Seller to make changes, to the goods and services to be provided pursuant to the Order, upon written notice to Seller. Buyer also reserves the right to otherwise change the scope of the work covered by the Order, including without limitation work with respect to such matters as inspection, testing or quality control, upon written notice to Seller. Buyer may also direct the supply of raw materials or other purchased components from itself or from third parties. Seller will promptly make any such requested change. In order for Seller to request a reasonable difference in price or time for performance as a result of such a change, Seller must notify Buyer of its request in writing within ten calendar days after receiving notice of the change. Buyer shall be entitled to receive additional documentation from Seller upon request relating to any change in specifications, price or time for performance. Seller will not make any change in the Supplies' design, specifications, processing, packing, marking, shipping, price or date or place of delivery except at Buyer's written instructions or with Buyer's written approval.

5. QUALITY AND INSPECTION:

Buyer may enter Seller's facility to inspect the facility, Supplies, materials manufacturing work and any of Buyer's property (or the property of Buyer's customer) related to the Order. Buyer's acceptance, inspection, or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Buyer's inspection of Supplies, whether during manufacture, prior to delivery or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Nothing in the Order releases Seller from the obligation of testing, inspection and quality control. Notwithstanding prior inspections, the Supplies are subject to inspection, evaluation and testing at the facility designated by Buyer, and notwithstanding any payment that may be made, the Supplies shall not be deemed accepted until such in-facility inspection, evaluation and testing demonstrate to Buyer's satisfaction that the Supplies conform to all applicable terms of the Order, including through the production of a reasonable number of sample parts, and Seller receives a signed writing from Buyer's authorized representative that acknowledges compliance of the Supplies with all applicable terms of the Order. Payment for nonconforming Supplies is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects. Buyer's inspection, evaluation or testing before, during or after manufacture, delivery and performance shall not constitute a waiver of the right of subsequent rejection by reason of any latent or otherwise undiscovered defect. If requested by Buyer, Seller shall provide a pre-acceptance run-off to Buyer at Seller's facility, at no cost to Buyer.

6. NON-CONFORMING GOODS:

Seller will not substitute any goods for the goods covered by this Order unless Buyer consents in writing. In addition to other remedies available to Buyer: (a) Seller agrees to accept return, at Seller's risk and expense at full invoice price, plus transportation charges, and to replace, defective Supplies as Buyer deems necessary; (b) Buyer may have corrected at any time prior to shipment from

the facility designated by Buyer Supplies that fail to meet the requirements of the Order; and/or (c) Seller will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Supplies. Seller will document corrective actions within a commercially reasonable period after discovery of any defect and will take whatever measures are necessary to correct the defect. Further, if Buyer rejects any Supplies as non-conforming, Buyer may, at its option: (d) reduce the quantities of Supplies ordered under the Order by the quantity of non-conforming Supplies; and/or (e) exercise any other applicable rights or remedies. Seller will bear all risk of loss with respect to all non-conforming Supplies and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose any non-conforming Supplies.

7. FORCE MAJEURE:

If Seller is unable to produce, sell or deliver any goods or services covered by the Order, or Buyer is unable to accept delivery, buy or use any goods or services covered by the Order, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, then any delay or failure to perform under the Order that results from such event or occurrence will be excused for only so long as such event or occurrence continues; provided, however, that the affected party gives written notice of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than three (3) days thereafter). Such events and occurrences may include, by way of example and not limitation, natural disasters, fires, floods, windstorms, severe weather, explosions, riots, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), equipment breakdowns and power failures; provided however, that for non-U.S. Orders or contracts, labor problems are not considered an event or occurrence beyond the reasonable control of Seller and as such will not be an excusable delay under this section. If Seller fails to provide adequate assurances that any delay will not exceed thirty (20) days or if any delay lasts more than thirty (20) days, Buyer may terminate the Order without any liability to Seller or obligation to purchase raw materials, work-in-process or finished goods or services. During any delay or failure to perform described in this Section, Buyer may at its option: (a) purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) require Seller to deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under the Order; and/or (c) have Seller provide the Supplies from other sources in quantities and at a time requested by Buyer and at the price set forth in the Order.

8. WARRANTY:

8.1 General. Seller warrants and guarantees to Buyer and its affiliates and their successors and assigns and customers that the goods and services covered by the Order will: (a) conform to, and be capable of performing as described in, the applicable specifications, standards, drawings, samples, descriptions and revisions as furnished or specifically approved in writing by Buyer, including without limitation at a minimum that, if the Supplies consist of, in whole or in part, machinery and/or equipment, such Supplies shall be designed and fabricated to be sufficiently durable to support the manufacture of all production and service requirements through the production lifetime of the relevant part and also permit the production of Buyer's subsequent service-only requirements; (b) comply with, and have been produced, processed, packaged, labeled, delivered and sold, and be capable of operating in conformity with, all applicable federal, state, provincial, local and foreign laws, orders, codes, regulations and standards; (c) are sufficient and suitable for Buyer's intended purpose; (d) be of good and merchantable quality; (e) be of good material and workmanship; (f) be manufactured or otherwise fabricated, or be performed by, adequately trained, properly supervised personnel in a good and workmanlike

manner and in accordance with all standards and specifications agreed on with Buyer and otherwise consistent with best practices in Seller's industry; (g) unless requested or approved by Buyer in writing, not incorporate or consist of commercial surplus, used, remanufactured or reconditioned material or components or material or components of such age or so deteriorated as to impair the usefulness or safety thereof; and (h) be free from defect and liens and encumbrances. Seller's responsibility under this warranty shall include without limitation, all parts, labor and transportation cost in the event the Supplies must be returned to Seller for repair or replacement. Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in Supplies that is or may become harmful to persons or property. Buyer's approval of any design, drawing, material, process, specifications or Supplies will not relieve Seller of these warranties. The foregoing warranties will survive delivery, inspection and payment and run in favor of Buyer and its affiliates and their successors, assigns and customers. Seller warrants that it will, whenever possible, use commercially available purchase parts of the highest industry quality, and will supply a detailed bill of material listing all parts. Seller further agrees that it will comply with all specific product-sourcing directions of Buyer. Seller further warrants that all goods supplied to Buyer shall be equipped with approved or appropriate fail-safe safeguarding systems.

8.2 Warranty Remedies. If any goods or services shall be unsatisfactory, defective or inferior in quality, or shall not conform to Buyer's specifications or any other requirements set forth in the Order (including without limitation Seller's warranties), Buyer, at its option and in addition to any other rights and remedies to which it is entitled under the Order, applicable law or otherwise, may (a) require Seller, at its sole cost and expense, to promptly repair or replace the goods or to promptly re-perform the services properly; (b) retain the goods at an adjusted price; (c) hold the goods at Seller's risk and expense pending Seller's specific instructions; or (d) return the goods to Seller at Seller's risk and expense for replacement, credit or full or partial refund, as Buyer shall direct. Buyer may also, at its discretion, refuse to accept further delivery of goods or performance of services, in whole or in part, under the Order. Seller shall reimburse Buyer for all of its costs and expenses relating to the installation, removal, storage, handling, packing and/or transporting of any such unsatisfactory, defective, inferior or otherwise nonconforming Supplies, and Seller shall assume all risk of loss or damage in transit to Supplies returned by Buyer. Notwithstanding the foregoing, Buyer reserves the right to repair the goods or re-perform the services without voiding any of Seller's warranties or other obligations under the Order. Seller shall reimburse Buyer for all of its costs and expenses relating to any such repair or re-performance.

9. INGREDIENTS AND HAZARDOUS MATERIALS:

Prior to, and together with, the shipment of the Supplies, Seller will furnish to Buyer and all carriers sufficient written warning and notice (including appropriate labels on the goods, containers and packing, including without limitation disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or a part of any of the Supplies, together with all special handling instructions, safety measures and precautions as may be necessary to comply with applicable law, to inform Buyer and all carriers of any applicable legal requirements and to best allow Buyer and all carriers to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing.

10. INSOLVENCY OF SELLER:

In any of the following, or any similar events, Buyer may immediately terminate the Order without any liability to Seller or obligation to purchase raw materials, work-in-progress or finished Supplies: (a) insolvency or financial

difficulties of Seller; (b) filing of a voluntary petition in bankruptcy by Seller; (c) filing of any involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee for Seller; (e) execution of an assignment for the benefit of creditors by Seller; or (f) any accommodation by Buyer, financial or otherwise, not contemplated by the Order, that are necessary for Seller to meet its obligations under the Order. Seller will reimburse Buyer for all costs Buyer incurs in connection with any of the foregoing whether or not the Order is terminated, including, but not limited to, all attorney or other professional fees.

11. TERMINATION:

11.1 Without limiting any other provision of the Order or Buyer's rights under applicable law, Buyer may terminate all or any part of the Order without any liability to Seller if Seller: (a) repudiates, breaches or threatens to breach any of the terms of the Order, including Seller's warranties; (b) fails to perform or threatens not to perform services or deliver goods in accordance with the Order; (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within 10 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach; (d) enters or offers to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of Supplies for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller; or (e) fails to assure timely and proper completion of services or delivery of goods.

11.2 In addition to any other rights of Buyer to cancel or terminate the Order, Buyer may in its sole discretion terminate all or any part of the Order at any time and for any reason by giving written notice to Seller.

11.3 Upon receipt of notice of termination, and unless otherwise directed by Buyer, Seller will: (a) promptly terminate all work under the Order; (b) transfer title and deliver to Buyer the finished Supplies, the work in process and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer, free and clear of all liens, claims and encumbrances; (c) verify and settle any claims by subcontractors for actual costs incurred as a result of the termination and ensure the recovery of materials in subcontractors' possession; (d) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (e) upon Buyer's request, cooperate with Buyer in transferring the production of Supplies to a different supplier.

11.4 Upon termination pursuant to Section 11.2 above, Buyer will be obligated to pay only the following: (a) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the Order; (b) Seller's reasonable actual cost of merchantable and useable work-in-process and the parts and materials transferred to Buyer under Section 11.3(b) above; and (c) Seller's reasonable actual costs of settling claims regarding its obligations to its subcontractors required under the Order to the extent directly caused by the termination. Notwithstanding any other provision, Buyer will have no obligation for and will not be required to pay Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures or general administrative burden charges from termination of the Order, except as otherwise expressly agreed in a separate Order issued by Buyer. Any obligation of Buyer upon termination will not exceed the obligation Buyer would have had to Seller in the absence of termination. Seller will furnish to Buyer, within one month after the date of

termination, its termination claim, which will consist exclusively of the items of Buyer's obligation to Seller that are expressly permitted by this Section; all claims not so specified shall be deemed and hereby are waived. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. Buyer will have no obligation for payment to Seller under this Section if Buyer terminates the Order or portion thereof because of a default or breach by Seller.

11.5 In connection with termination of the Order by either party or Buyer's other decision to change to an alternate source of Supplies, Seller will cooperate in the transition of supply, including the following: (a) Seller will continue production, delivery and performance of all Supplies as ordered by Buyer, at the prices and other terms provided in the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Supplies as needed; (b) at no cost to Buyer, Seller will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including onsite inspections, bill of material data, tooling and process detail and samples of Supplies and components; and (c) subject to Seller's reasonable capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary packaging and transportation and other special services (collectively, "Transition Support") as expressly requested by Buyer in writing. If the transition occurs for reasons other than Seller's termination for breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that Seller has advised Buyer prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller and pay the disputed portion into third-party escrow for disbursement by arbitration.

11.6 The obligations of Seller to Buyer survive termination of the Order, except as otherwise provided in the Order.

12. TECHNICAL INFORMATION:

12.1 Information Disclosed by Seller. Seller will create, maintain, update and provide to Buyer, in compliance with Buyer's drafting and math data standards, all technical information about the goods and their manufacture which is reasonably necessary or requested by Buyer in connection with its use of the goods, including, without limitation, the engineering validation and qualification of the goods for production and other applications and compliance with any legal or regulatory requirements. Such technical information will not be subject to any use or disclosure restrictions.

12.2 Waiver of Claims. Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer, Buyer's customers or their respective suppliers with respect to any technical information that Seller shall have disclosed, or may hereafter disclose, in connection with the goods or services covered by the Order.

12.3 Repair and Rebuild. Seller authorizes Buyer, its affiliates, agents and subcontractors, and Buyer's customers and their subcontractors to repair, reconstruct or rebuild the goods and products delivered under the Order without payment of any royalty or other compensation to Seller; provided this right does not authorize Buyer to manufacture or sell Seller's goods to any third party.

12.4 Software. Seller grants to Buyer a permanent, paid-up, non-exclusive license to use any software incorporated in the goods, in object code only, only with the goods and only for the purpose of operating the goods. Buyer may not

modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based upon such software, except and only to the extent that such activity is expressly agreed to by Seller or permitted by applicable law. Buyer shall acquire no rights of ownership in the software.

12.5 Development, Engineering and Consulting Services. Engineering, consulting or development services ("Development Services") funded under the Order that result in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property ("IP") shall be the sole property of Buyer. Seller agrees to, and hereby does, assign all right, title and interest in and to IP the results from Development Services ("Developed IP") to Buyer. Seller shall notify Buyer of the existence of Developed IP and assist Buyer in every reasonable way to perfect its right, title and interest in Developed IP, such as by executing and delivering all additional documents reasonably requested by Buyer in order to perfect, register and/or enforce the same, and Buyer shall reimburse Seller for reasonable costs incurred by Seller in providing such assistance. If an assignment of the Developed IP is not possible under the applicable law, Seller hereby grants an exclusive, perpetual, royalty-free license to Buyer with respect to such Developed IP. Drawings, plans, software (including the source code), prototypes, etc. developed and funded under the Order shall be transferred to Buyer and all Developed IP incorporated in such drawings, plans, software, prototypes shall belong to Buyer.

13. INDEMNIFICATION:

13.1 Infringement. Seller will defend, hold harmless and indemnify Buyer, its affiliates, successors and assigns and their customers, against any claims of infringement (including patent, trademark, copyright, moral, industrial design or other proprietary rights, or misuse or misappropriation of trade secret) and resulting damages and expenses (including, without limitation, attorney and other professional fees and disbursements) relating to the goods or services covered by the Order, including any claims in circumstances where Seller has provided only part of the goods or services. Seller waives any claim against Buyer that any such infringement arose out of compliance with Buyer's specifications.

13.2 Activities on Buyer's Premises. Seller will defend, hold harmless and indemnify Buyer, its affiliates, successors and assigns and their customers from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising from or in connection with the performance of any service or work by Seller or its employees, agents, representatives and subcontractors ("Personnel") on Buyer's or Buyer's customer's premises or the use of the property of Buyer or any customer of Buyer, except to the extent such liability arises out of the negligence or willful misconduct of Buyer or Buyer's customer. Seller will assure that all Personnel who are performing Services on behalf of Seller are competent to perform the Services. Seller will require all Personnel who are performing any work on Buyer's premises to comply with all of Buyer's regulations and policies. Buyer, in its sole discretion, has the right to: (a) bar any of Personnel from Buyer's premises for failure to observe Buyer's regulations or policies; (b) require that Seller promptly remove from Buyer's premises any Personnel who violate any of Buyer's regulations or policies; and (c) require that Seller cease using any Personnel to perform the services who are reasonably unacceptable to Buyer. Buyer will confer with Seller to discuss Buyer's concerns prior to requiring removal of any Personnel. Seller will replace any barred or removed Personnel with Personnel reasonably acceptable to Buyer.

13.3 Product Liability; General. Seller will defend, hold harmless, and indemnify Buyer, its affiliates, successors and assigns and their customers from and against any liability and expenses (including, without limitation, attorney

and other professional fees and disbursements) arising from or in connection with any claims or demands (a) to recover for personal injury or death, property damage or economic loss caused by any of the goods or services supplied by Seller (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or any other legal theories), (b) relating to any actual or alleged breach of or failure by Seller to comply with any representation, warranty, covenant or other term and condition in any Order, and (c) the negligence or more culpable acts or omissions of Seller or its Personnel.

14. COMPLIANCE WITH LAWS:

Seller, and any goods or services supplied by Seller, will comply with all applicable laws, rules, regulations, orders, conventions, ordinances and safety standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the goods or services, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. The Order incorporates by reference all clauses required by these laws. All materials used by Seller in the Supplies or in their manufacture will satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. Neither Seller nor any of its subcontractors will utilize slave, prisoner or any other form of forced or involuntary labor in the supply of goods or services under the Order. Upon Buyer's request, Seller will certify in writing its compliance with the foregoing. Seller will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages or expenses (including reasonable attorney or other professional fees and disbursements) arising from or relating to Seller's noncompliance with this Section 14.

15. INSURANCE:

Seller, at its sole cost and expense, will maintain the insurance coverage listed below or in additional amounts as may be reasonably requested by Buyer or commercially reasonable, in each case naming Buyer and its affiliates and customers as "additional insured." In all cases, such insurance policies will provide for the waiver of the insurer's right of subrogation against Buyer and Seller. Seller will furnish to Buyer from time to time upon Buyer's written request a certificate showing compliance with this requirement or certified copies of all insurance policies within 10 days of Buyer's request. The certificate will provide that Buyer will receive 30 days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Seller of its obligations or liabilities under the Order. Minimum coverage is as follows: (a) Workers compensation, as statutorily required; (b) Employer's liability – US \$100,000 per accident, disease, policy limit, disease each employee; (c) Commercial general liability insurance, including contractual liability coverage – US \$5,000,000 per occurrence, general aggregate, products & completed operations aggregate; and (d) commercial automobile liability insurance – US \$1,000,000 per occurrence, combined single limit.

16. USE OF BUYER'S INFORMATION:

Seller will: (a) keep all Buyers' Information (as defined below) confidential and disclose it only to its Personnel who need to know such Buyer's Information in order for Seller to supply goods and services to Buyer under the Order; and (b) use the Buyer's Information solely for the purpose of supplying goods and services to Buyer under the Order. Goods manufactured based on Buyer's Information may not be used for Seller's own use or sold by Seller to

third parties without prior express written consent from an authorized employee of Buyer. "Buyer's Information" means all information and items provided to Seller by Buyer or its representatives or subcontractors in connection with the business, programs, goods and services covered by the Order, including, without limitation, pricing and other terms of the Order, specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, parts, manufacturing, packaging or shipping methods and processes and computer software and programs (including object and source code). Buyer's information also includes any material or information that contains, or is based on, any Buyer's information whether prepared by Buyer, Seller or any other person.

17. PREVENTATIVE MAINTENANCE.

Seller will provide Buyer with a complete and comprehensive preventative maintenance plan for all equipment and machinery included within the Supplies prior to final acceptance at the facility designated by Buyer. The preventative maintenance plan shall include, without limitation, at least two (2) complete sets of maintenance and operating manuals for all such Supplies purchased by Buyer (including one in a foreign language, if required by Buyer), as well as a detailed bill of material. Seller warrants to Buyer and its affiliates, their respective customers, and their successors and assigns, that such Supplies will operate safely at quoted production rate and/or cycle times for the stated expected useful life if Buyer follows the preventative maintenance plan proposed by Seller. Seller will provide to Buyer upon request a complete copy of (a) the source codes for any software incorporated in the Supplies purchased by Buyer from Seller along with any additional information reasonably necessary so that a trained programmer of general proficiency may maintain and support any such software and (b) a running object code version of such software.

18. SERVICE AND REPLACEMENT PARTS:

Seller shall make available to Buyer, for purchase at the prices set forth in the Order, repair and replacement parts and service tools for each equipment and/or machinery component of the Supplies, for a period of fifteen (15) years after acceptance of such Supplies by Buyer or such longer period as is set forth in the Order. Notwithstanding the foregoing, the price payable by Buyer under this paragraph for any such part or tool shall not exceed the lowest delivered price for that part or tool offered or charged by Seller to any customer at any time during the six-month period immediately preceding the calculation of the price hereunder or as defined in Buyer's specifications. Such lowest delivered price shall be determined after application of any type of price discount, credit, allowance, rebate, promotion or other financial consideration offered by Seller.

19. SECURITY INTEREST.

To secure all of Seller's debts, obligations and liabilities under and in connection with the Order, Seller hereby grants to Buyer a security interest in the following property of Seller, whether now owned or hereafter acquired: (a) the Supplies; (b) all component parts, supplies, machinery, tools, raw materials and other equipment and property of Seller purchased or identified for use in Seller's performance of the Order or for incorporation into the goods or services; (c) all of Seller's rights by virtue of down payments and purchase orders for and all of Seller's other general intangibles relating to such component parts, supplies, machinery, tools, raw materials and other equipment and property; (d) all drawings (including without limitation proprietary drawings), plans, specifications, blueprints and other documents prepared during or in connection with Seller's performance of the Order; and (e) all accessions and attachments to and all proceeds and products of any of the foregoing. Seller authorizes Buyer to file such financing statements and other documents, and to

take such actions, as Buyer reasonably deems necessary or advisable to protect Buyer's rights in the items described in sub clauses (a)-(e) above.

20. TRAINING:

Seller will provide any and all necessary training and training materials to Buyer for the Supplies at the initial stage of installation, at no additional cost to Buyer, at Buyer's facility (unless another location is designated on the Order or in the specifications provided by Buyer). Seller will provide training in the amount and on such schedule as may be reasonably required by Buyer. Seller will provide the training materials in a computerized format, if possible. Where Seller obtains the Supplies or a portion of the Supplies from a third party for resale to Buyer, Seller shall cause such third party to provide the training contemplated in this Section.

21. REMEDIES:

The rights and remedies reserved to Buyer in this Order are cumulative with, and in addition to, all other or further remedies in law or equity. Seller will reimburse Buyer for Buyer's damages caused by Seller's breach or by nonconforming Supplies. Buyer's damages include reasonable professional fees incurred by Buyer. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Supplies and will participate in and comply with warranty reduction or related programs as directed by Buyer that relate to the Supplies. In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Supplies or transition support or for possession of property, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to an immediate order for specific performance of Seller's obligations, plus Buyer's reasonable attorney fees. In addition, whenever Buyer in good faith has reason to question Seller's ability or intent to perform in accordance with the Order, Buyer may demand in writing adequate assurance from Seller or Seller's ability and/or intent to perform, and Buyer may suspend performance under the Order pending receipt of such assurance. In the event such a demand is made and adequate assurance, in form and substance acceptable to Buyer in its sole discretion, is not given by Seller within ten (10) calendar days after any such demand (or such shorter period of time if commercially reasonable under the circumstances), that failure may be treated as a repudiation of the Order by Seller, and Buyer may seek or exercise any remedy for such repudiation.

22. CUSTOMS AND EXPORT CONTROLS:

22.1 Credits and Refunds. Credits or benefits associated with or arising from Supplies purchased under the Order, including trade credits, export credits or rights to the refund of duties, taxes or fees, belong to Buyer. Seller will, at its expense, provide all information and certificates necessary to permit Buyer to receive these benefits, credits or rights. Seller agrees to fulfill any customs related obligations, origin marking or labeling requirements and local content origin requirements. Export licenses or authorizations necessary for the export of Supplies are Seller's responsibility unless otherwise stated in the Order, in which case Seller will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Seller will promptly notify Buyer in writing of any material or components used by Seller in filling the Order that Seller purchases in a country other than the country in which the Supplies are delivered. Seller will furthermore, at its expense, provide Buyer with all information, documentation and electronic transaction records relating to the Supplies necessary for Buyer to fulfill any customs-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for Supplies eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the Supplies to be covered by any duty

deferral or free trade zone program(s) of the country of import. Seller will, at its expense, provide Buyer or Buyer's nominated service provider with export documentation to enable the Supplies to be exported, and obtain all export licenses or authorizations necessary for the export of the Supplies unless otherwise indicated in the Order, in which event Seller will provide all information as may be necessary to enable Buyer to obtain such licenses or authorization(s). Seller will provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of Supplies into the country in which Supplies are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Supplies is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.

22.2 Customs-Trade Partnership against Terrorism. To the extent any Supplies covered by the Order are to be imported into the United States of America, Seller shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership against Terrorism ("C-TPAT") initiative. Upon request, Seller shall certify in writing its compliance with the C-TPAT initiative.

23. BUYER'S RECOVERY RIGHT:

With respect to any monetary obligations of Seller or Seller's affiliates to Buyer or Buyer's affiliates, including, without limitation, direct and indirect losses, costs and damages resulting from Seller's failure to timely delivery goods or services, the failure of any goods or service to conform to applicable warranties or other breach by Seller of the Order, Buyer may at any time, as applicable, recover, recoup or setoff such amounts by deducting such amounts from any sums that are, or will become, owing, due or payable to Seller or Seller's affiliates by Buyer or Buyer's affiliates.

24. NO ADVERTISING:

Seller will not, in any manner, advertise or publish that Seller has contracted to furnish Buyer the goods or services covered by the Order or use any trademarks or trade names of Buyer in Seller's goods, advertising or promotional materials unless Buyer consents in writing.

25. NO IMPLIED WAIVER:

The failure of either party at any time to require performance by the other party of any provision of the Order will not affect the right to require such performance at any later time, nor will the waiver by either party of a breach of any provision of the Order constitute a waiver of any succeeding breach of the same or any other provision. No failure or delay in exercising any right or remedy will operate as a waiver thereof nor will any single or partial exercise thereof preclude other or further exercise thereof. No course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under the Order.

26. ASSIGNMENT; SEVERABILITY:

Buyer may assign its rights and obligations under the Order without Seller's prior written consent. Seller may not assign or delegate its rights or obligations under the Order without prior written consent from an authorized employee of Buyer. If any provision of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Order will remain in full force and effect.

27. RELATIONSHIP OF PARTIES:

Seller and Buyer are independent contracting parties. Nothing in the Order makes either party the agent or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party.

28. GOVERNING LAW AND JURISDICTION:

The Order is to be construed according to the laws of the United States of America and the State of Michigan, excluding the provisions of the United Nations Convention on Purchase Orders or Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law; and Seller hereby agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, the Order will lie exclusively in the appropriate federal or state courts in the State of Michigan and specifically waives any and all objections to such jurisdiction and venue.

30. RIGHT TO AUDIT AND INSPECT:

Buyer, at its expense, has the right to audit and review all relevant books, records, income statements, balance sheets, cash flow statements, payroll data, receipts and other related supporting data, including Seller's administrative and accounting policies, guidelines, practices and procedures, in order to: (a) substantiate any charges and other matters under the Order; and (b) assess Seller's ongoing ability to perform its obligations under the Order. Seller will maintain and preserve all such documents for a period of four (4) years following final payment under the Order. Seller will provide Buyer with reasonable access to its facilities and otherwise cooperate and facilitate any such audits by Buyer.

31. ENTIRE AGREEMENT:

The Order, together with these Terms and the attachments, exhibits, supplements or other terms of Buyer specifically referenced in the Order, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Order and supersedes all prior oral or written representations and agreements. The Order may only be modified by a written contract amendment issued by Buyer. Notwithstanding anything to the contrary contained herein, Buyer explicitly reserves, and the Order will not constitute a waiver or release of, any rights and claims against Seller arising out of, or relating to, any fraud or duress in connection with the formation of the Order or any breach or anticipatory breach of any previously existing contract between Buyer and Seller (whether or not such previously existing contract related to the same or similar goods or subject matter as the Order). All payments by Buyer to Seller under the Order are without prejudice to Buyer's claims, rights or remedies. Any legal action or arbitration proceeding by Seller under any Order must be commenced no later than one (1) year after the breach or other event giving rise to Seller's claim occurs, or Seller becomes aware of the existence (or facts and circumstances giving rise to the existence) of such claim, whichever occurs first. The parties have agreed and it is their intent that the battle of the forms Section 2-207 of the Uniform Commercial Code shall not apply to these Terms or to any invoice or acceptance form of Seller relating to these Terms. It is the parties' intent that these Terms shall exclusively control the relationship of the parties, and in the event of any inconsistency between any invoice or acceptance form sent by Seller to Buyer and these Terms, these Terms shall control.